

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

DARREL EVANS	\$	
VS.	\$	CIVIL ACTION NO. 1:04cv796
R.D. MILES, ET AL	\$	

MEMORANDUM ORDER OVERRULING PETITIONER'S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Darrel Evans, an inmate incarcerated within the Bureau of Prisons, proceeding *pro se*, brought this petition for writ of mandamus.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning the petition. The magistrate judge recommends the petition be dismissed without prejudice for failure to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings and all available evidence. Petitioner filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit. While petitioner's motion to amend

his petition to add certain nonprison employees as respondents is **GRANTED**, as petitioner is nevertheless complaining about conditions of his confinement, 42 U.S.C. § 1997e requires him to exhaust his administrative remedies before proceeding with his claim.

O R D E R

Accordingly, petitioner's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered dismissing this petition.

SIGNED at BEAUMONT, Texas, on this the 28 day of June, 2005.

A handwritten signature in black ink, appearing to read 'Howell Cobb', written over a horizontal line.

HOWELL COBB
UNITED STATES DISTRICT JUDGE